

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION**

This document relates to:

All actions

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

**DECLARATION OF KELLY K. McNABB IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO MCKINSEY'S MOTION TO MODIFY AMENDED CASE
MANAGEMENT ORDER NO. 2**

I, Kelly K. McNabb, declare and say that:

1. I am a partner with the law firm of Lieff Cabraser Heimann & Bernstein, LLP, and I am one of the attorneys who represents the plaintiffs in *In re McKinsey & Co., Inc., National Prescription Opiate Consultant Litigation*, MDL No. 2996. As such, I have personal knowledge of the facts surrounding the present action and all the facts stated herein.

2. This declaration is submitted in further support of Plaintiffs' Opposition to McKinsey's Motion to Modify Amended Case Management Order No. 2 (Dkt. 4080).

3. On June 7, 2021, the Judicial Panel on Multidistrict Litigation consolidated actions concerning McKinsey's opioid-related work performed for Purdue and other MDL 2804 defendants to the United States District Court for the Northern District of California assigning Judge Charles R. Breyer as the transferee judge. *See In re McKinsey & Co., Inc., Nat'l Prescription Opiate Consultant Litig.*, No. MDL 2996, 2021 WL 2351628 (JPML June 7, 2021).

4. Recognizing the overlap between MDL 2996 and MDL 2804, on Wednesday, September 15, 2021, Plaintiffs' counsel in MDL 2996 contacted counsel for McKinsey

requesting a telephonic meet and confer to discuss the productions that were previously made by the defendants in MDL 2804 related to McKinsey.

5. On Tuesday, September 21, 2021, the parties in MDL 2996 met and conferred regarding coordination with MDL 2804 among other things.

6. On Wednesday, September 22, 2021, Plaintiffs' counsel in MDL 2996 provided McKinsey's counsel with a proposed motion to modify the protective order in MDL 2804 that would allow for coordination.

7. On Friday, October 1, 2021, the parties in MDL 2996 met and conferred telephonically about the proposed motion to modify the protective order in MDL 2804 at which point McKinsey raised concerns about the scope of "McKinsey-related" documents produced in MDL 2804.

8. On Tuesday, October 5, 2021, Plaintiffs' counsel in MDL 2996 e-mailed counsel for McKinsey proposing an initial set of search terms to identify documents produced in MDL 2804 that were related to the opioid-related consulting work performed by McKinsey, such as "McKinsey /2 Company" and "McKinsey /2 Co", which would be produced as soon as practicable. These McKinsey search terms hit on approximately 38,000 documents produced by manufacturers in MDL 2804 without families. Plaintiffs further proposed that after the initial pleading and briefing stage, the parties would continue to meet and confer in good faith on any additional terms Plaintiffs or McKinsey wish to apply to the 2804 productions.

9. On Friday, October 8, 2021, McKinsey responded to Plaintiffs' proposal indicating that it could not agree to a process where Plaintiffs could begin using 2804 materials immediately, while McKinsey did not have immediate access to all discovery in MDL 2804.

10. On Monday, October 11, 2021, Plaintiffs' counsel responded to McKinsey reiterating that plaintiffs were in agreement that all parties in 2996 should be working off the same set of documents and the purpose of a motion to modify the MDL 2804 was to simply allow coordination between the two MDLs. Plaintiffs' counsel sought edits to the proposed motion to that end.

11. On Wednesday, October 13, 2021, counsel for McKinsey provided redline edits to the proposed motion to modify the MDL 2804 protective order that conditioned agreement to the motion on immediate and full access to Discovery Material produced in MDL 2804.

12. The following day, on Thursday, October 14, 2021, Plaintiffs' counsel responded to McKinsey that counsel did not believe full access to more than 50 terabytes of data produced in MDL 2804 was necessary or proportional to the needs of MDL 2996 at that time. Having exhausted efforts to come to agreement with McKinsey, the Plaintiffs' Executive Committee filed the motion to modify the MDL 2804 protective order (Dkt. 4024), which the Court granted the following day (Dkt. 4028).

13. On Friday, October 15, 2021, McKinsey filed a Motion to Vacate the Court's order on Plaintiffs' Motion to Modify Protective Order and Amended Case Management Order No. 2 and requested a briefing schedule to Plaintiffs' motion. Dkt. 4033.

14. On Monday, October 18, 2021, this Court denied McKinsey's Motion to Vacate the Order on Plaintiffs' Motion to Modify Protective Order and Amended Case Management Order No. 2 and set a briefing schedule. Dkt. 4037.

15. On Wednesday, October 20, 2021, Plaintiffs' counsel contacted counsel for McKinsey asking for a telephonic meet and confer to further discuss the scope of discovery conducted in MDL 2804, including the volume and expense associated with McKinsey's request

for full access to all discovery conducted in MDL 2804. The parties had that telephonic conference on Thursday, October 21, 2021 and Plaintiffs' counsel agreed to provide McKinsey with additional information about the scope of discovery in MDL 2804 in the spirit of transparency and cooperation to aid the parties in coming to agreement.


16. In working with Plaintiffs' counsel in MDL 2804, on Monday, October 25, 2021, and Wednesday, November 3, 2021, Plaintiffs' counsel in MDL 2996 provided McKinsey with additional information regarding the discovery in MDL 2804, including a list of producing defendants and third-parties and the volume of documents associated with those productions.

17. The MDL 2996 parties continue to work cooperatively to narrow the scope of discovery produced in MDL 2804 to that which is relevant and proportional to the needs to MDL 2996.

18. Plaintiffs' counsel in MDL 2804 has confirmed the data produced in MDL 2804 is approximately 50 terabytes, costs over \$350,000 a month to store, and that production costs of this data to McKinsey would be over \$50,000 and take approximately 2 months to complete.

19. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: November 8, 2021



Kelly K. McNabb